

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL ANTHONY WILLIAMS,)	
# 214930,)	
)	
Plaintiff,)	Case No. 1:08-cv-470
)	
v.)	Honorable Robert Holmes Bell
)	
CINDI S. CURTIN, et al.,)	<u>REPORT AND RECOMMENDATION</u>
)	
Defendants.)	
)	

This is a civil rights action brought *pro se* by a state prisoner under 42 U.S.C. § 1983. Plaintiff's complaint arises out of an October 25, 2007 incident at the Oaks Correctional Facility (ECF). On March 3, 2009, this court dismissed plaintiff's complaint on initial screening. (docket # 10). On January 31, 2011, the Sixth Circuit overturned the dismissal, finding that under the liberal standards applicable to *pro se* pleadings, plaintiff's complaint alleged an excessive use of force in violation of plaintiff's Eighth Amendment rights. (1/31/11 Op., docket # 14). The Sixth Circuit's decision did not purport to address plaintiff's claims against any particular defendant.

The matter is now before me on a Rule 12(b)(6) motion to dismiss by defendants Cindi Curtin and Robert Sanders. (docket # 21). Plaintiff has filed his response (docket # 24), and the motion is ready for decision. Upon review, I recommend that defendants' Rule 12(b)(6) motion be granted.

Plaintiff's Allegations

Cindi Curtin and Robert Sanders are listed in the caption of plaintiff's complaint. (docket #1, ID# 1). Curtin is ECF's warden. (*Id.* at ¶ III(B), ID# 2). Sanders is a Resident Unit Manager (RUM). (*Id.* at ¶ III(C), ID # 2). The body of the complaint is devoid of factual allegations against either defendant.

Discussion

In order to state a claim against a state officer under 42 U.S.C. § 1983, plaintiff must allege facts showing that defendants, while acting under color of state law, deprived plaintiff of rights guaranteed by the United States Constitution or laws. *See West v. Atkins*, 487 U.S. 42, 48 (1988). Liability under section 1983 must be based on active unconstitutional behavior. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1951-52 (2009); *Shehee v. Luttrell*, 199 F.3d 295, 300 (6th Cir. 1999). A *pro se* complaint that merely names persons as defendants in the caption without alleging specific conduct by them is subject to summary dismissal. *See Gilmore v. Corr. Corp. of Am.*, 92 F. App'x 188, 190 (6th Cir. 2004); *Potter v. Clark*, 497 F.2d 1206, 1207 (7th Cir. 1994); *see also Cameron v. Howes*, No. 1:10-cv-539, 2010 WL 3885271, at * 6 (W.D. Mich. Sept. 28, 2010) (collecting cases). In the absence of factual allegations of active unconstitutional behavior by defendants Curtin and Sanders, plaintiff's complaint fails to state a civil rights claim against these individuals.

Recommended Disposition

For the reasons set forth herein, I recommend that the Rule 12(b)(6) motion to dismiss by defendants Curtin and Sanders (docket # 21) be granted.

Dated: December 16, 2011

/s/ Joseph G. Scoville

United States Magistrate Judge

NOTICE TO PARTIES

Any objections to this Report and Recommendation must be filed and served within fourteen days of service of this notice on you. 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b). All objections and responses to objections are governed by W.D. MICH. LCIVR 72.3(b). Failure to file timely and specific objections may constitute a waiver of any further right of appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Branch*, 537 F.3d 582, 587 (6th Cir.), cert. denied, 129 S. Ct. 752 (2008); *Frontier Ins. Co. v. Blaty*, 454 F.3d 590, 596-97 (6th Cir. 2006). General objections do not suffice. *Spencer v. Bouchard*, 449 F.3d 721, 724-25 (6th Cir. 2006); *see Frontier*, 454 F.3d at 596-97; *McClanahan v. Comm'r of Social Security*, 474 F.3d 830, 837 (6th Cir. 2006).